

AGENDA ITEM 8  
February 7, 2006  
**Introduction**

**MEMORANDUM**

TO: County Council

FROM: *MA* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 2-06, Collective Bargaining – County Employees - Fact Finding

Bill 2-06, Collective Bargaining – County Employees - Fact Finding, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on February 7, 2006. A public hearing is tentatively scheduled for March 7 at 1:30 p.m.

The central feature of Bill 2-06 would insert issue-by-issue fact-finding as an interim step before the Executive and the County employees' union submit their final offers on unresolved issues to the mediator/arbitrator. In Council staff's view this change would move the collective bargaining process from the current last-best-offer, total package arbitration much closer to issue-by-issue arbitration, which the County government has previously resisted.

Bill 2-06 would also shift an estimated 163 temporary, seasonal, and substitute employees from their limited scope bargaining unit to the regular County employees bargaining unit (see memo's from Carol Rollins of OHR on ©13-14), slightly modify the bargaining calendar, and exempt certain confidential employees from the bargaining unit.

This packet contains:

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Bill No. 2-06  
Concerning: Collective Bargaining –  
County Employees - Fact-finding  
Revised: 2-3-06 Draft No. 2  
Introduced: February 7, 2006  
Expires: August 7, 2007  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) add a definition of *confidential employee* to the County employees collective bargaining law, and exclude confidential employees from certain bargaining units;
- (2) require the certified representative and employer to engage in fact-finding after an impasse is reached and to resume bargaining after receiving the fact-finding report of the mediator/arbitrator;
- (3) revise the applicability of the collective bargaining law to certain temporary, seasonal, or substitute employees;
- (4) revise the collective bargaining calendar for certain bargaining units; and
- (5) generally amend the law regarding County collective bargaining.

By amending

Montgomery County Code  
Chapter 33, Personnel and Human Resources  
Sections 33-102, 33-105, 33-107, and 33-108

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1        **Sec. 1. Sections 33-102, 33-105, 33-107, and 33-108 are amended as**  
 2 **follows:**

3 **33-102.        Definitions.**

4        The following terms have the meaning indicated when used in this Article:

5        [(1)]   \*       \*       \*

6        [(2)]   \*       \*       \*

7        [(3)]   \*       \*       \*

8        Confidential employee means an employee:

9                (A)   who is required to develop or present management positions on  
 10                        collective bargaining issues; or

11                (B)   whose duties normally require access to confidential  
 12                        information that contributes to the development of management  
 13                        positions on collective bargaining issues.

14        [(4)]   *Employee* means any person who works for the County government,  
 15                except:

16                                \*       \*       \*

17                (H)   an employee in a temporary, seasonal, or substitute position,  
 18                        unless the position is in a job class in which one or more of the  
 19                        incumbents are [predominantly] career merit system employees;

20                                \*       \*       \*

21                (P)   an employee in a position classified at grade 27 or above unless  
 22                        the employee's position is reclassified or reallocated on or after  
 23                        July 1, 2002, to a non-supervisory position at grade 27 or  
 24                        above; [or]

(Q) an employee in a position classified in the Management Leadership Service[.]; or

(R) a confidential employee.

[(5)] *Employee organization* means any organization that admits employees to membership and that has as a primary purpose the representation of employees in collective bargaining.

[(6)] *Employer* means the County Executive and [his or her] the County Executive's designees.

[(7)] \* \* \*

[(8)] *Mediation* means an effort by the [mediator/fact-finder] mediator/arbitrator chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

[(9)] \* \* \*

[(10)] \* \* \*

[(11)] \* \* \*

### 33-105. Units for collective bargaining.

\* \* \*

(c) *Temporary, seasonal, and substitute employees.*

(1) A temporary, seasonal, or substitute employee in an occupational class in which one or more of the incumbents are [predominantly] career merit system employees becomes a member of the applicable bargaining unit when the employee has worked 6 months in a position in that occupational class. However, the employee may be terminated for any cause or without cause and without any right of grievance until the

employee has completed 1040 hours of service in that position  
in any 12-month period.

- (2) A temporary, seasonal, or substitute employee who is excluded  
from the definition of “employee” under Section 33-102(4)(H)  
because the employee is not in an occupational class in which  
one or more of the incumbents are [predominantly] career merit  
system employees becomes a limited-scope member of the  
applicable bargaining unit immediately after the employee  
begins employment if:

\* \* \*

**33-107. Collective bargaining.**

- (a) *Duty to bargain; matters subject to bargaining.* Upon certification of  
an employee organization, the employer and the certified  
representative have the duty to bargain collectively with respect to the  
following subjects for employees other than limited-scope members of  
the bargaining unit under Section 33-105(c)(2):

\* \* \*

- (7) Amelioration of the effect on employees when the exercise of  
employer rights listed in subsection [(b)] (c) causes a loss of  
existing jobs in the unit.

\* \* \*

**33-108. Bargaining, impasse, and legislative procedures.**

- (a) Collective bargaining must begin no later than November 1 before the  
beginning of a fiscal year for which there is no agreement between the  
employer and the certified representative, and must be finished on or  
before February [1] 15.

(b) Any provision for automatic renewal or extension of a collective bargaining agreement is void. An agreement is not valid if it extends for less than one [(1)] year or for more than [three (3)] 3 years. All agreements take effect July 1 and end June 30.

\* \* \*

(d) Before September 10 of any year in which the employer and the certified representative bargain collectively, the Labor Relations Administrator must appoint a mediator/arbitrator, who may be a person recommended by both parties. The mediator/arbitrator must be available from January 2 to June 30. [Fees] The employer and the certified representative must share the fees and expenses of the mediator/arbitrator [must be shared] equally [by the employer and the certified representative].

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/arbitrator[,], or the parties may jointly request those services before an impasse is declared. If the parties do not reach an agreement by [February 1] January 24, an impasse exists. [Any] An issue regarding the negotiability of [any] a bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

(2) [Any] A dispute, except a dispute involving the negotiability of a bargaining proposal, must be submitted to the mediator/arbitrator whenever an impasse has been reached, or as provided in subsection (e)(1). The mediator/arbitrator must engage in mediation by bringing the parties together voluntarily

under such favorable circumstances as will encourage settlement of the dispute.

- (3) If the mediator/arbitrator finds, in the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, or [as of] on February 1 [when an impasse is automatically reached], whichever occurs earlier, the dispute must be submitted to [binding arbitration] fact-finding.

(f) (1) In fact-finding, the mediator/arbitrator must not hold a full evidentiary hearing. Instead, each party must briefly explain to the mediator/arbitrator the party's position on each proposal to which the parties have not agreed.

- (2) After hearing the parties' positions on each proposal in dispute, the mediator/arbitrator must issue a fact-finding report to the parties no later than February 6. In the fact-finding report, the mediator/arbitrator must state for each proposal whether the mediator/arbitrator favors the certified representative's position, the employer's position, or an alternative that does not exceed the parameters of either party's position.

- (3) After receiving the fact-finding report of the mediator/arbitrator, the parties must resume bargaining. If the parties do not reach agreement by February 15, they must submit their dispute to binding arbitration.

[(f)](g) (1) If binding arbitration is invoked, the mediator/arbitrator must not engage in further mediation. The mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the

mediator/arbitrator directs. If [only complete package proposals are required,] the mediator/arbitrator [must require] directs the parties to submit complete package proposals, the parties [to submit] must jointly submit a memorandum of all items previously agreed on.

\* \* \*

(3) On or before [February 15] March 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final offers submitted by the parties. The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator must not consider or receive any argument or evidence related to the history of collective bargaining in the immediate dispute, including any previous settlement offer not contained in the final offers. However, the mediator/arbitrator must consider all previously agreed-on items, integrated with the disputed items, to decide which offer is the most reasonable.

(4) In making a determination under this subsection, the mediator/arbitrator may consider only the following factors:

(A) [Past] past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions[.];

(B) [Comparison] comparison of wages, hours, benefits, and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland[.];

(C) [Comparison] comparison of wages, hours, benefits, and conditions of employment of other Montgomery County personnel[.];

(D) [Wages] wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County[.];

(E) [The] the interest and welfare of the public[.]; and

(F) [The] the ability of the employer to finance economic adjustments, and the effect of the adjustments on the normal standard of public services provided by the employer.

(5) The offer selected by the mediator/arbitrator, integrated with all previously agreed on items, is the final agreement between the employer and the certified representative, need not be ratified by any party, and has the effect of a contract ratified by the parties under subsection (c). The parties must execute the agreement[.], [and] The employer must include in the budget that the employer submits to the Council any provision [which] that requires action in the County budget must be included in the budget which the employer submits to the County Council].

[(g)](h) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by April 1, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of

185 funds, or the enactment or adoption of any County law or regulation,  
 186 or which has or may have a present or future fiscal impact. If a later  
 187 submission is necessary, the employer must specify the submission  
 188 date and the reasons for delay to the Council President by April 1.  
 189 The employer must expressly identify to the Council and the certified  
 190 representative any term or condition that requires Council review.  
 191 Each submission to the Council must include:

192 \* \* \*

193 [(h)](i) The Council may hold a public hearing to enable the parties and the  
 194 public to testify on the agreement.

195 [(i)](j) The Council may accept or reject all or part of any term or condition  
 196 that requires Council review under subsection [(g)] (h). On or before  
 197 May 1, the Council must indicate by resolution its intention to  
 198 appropriate funds for or otherwise implement the items that require  
 199 Council review or its intention not to do so, and must state its reasons  
 200 for any intent to reject any such item. The Council, by majority vote  
 201 taken on or before May 1, may defer the May 1 deadline to any date  
 202 not later than May 15.

203 [(j)](k) If the Council indicates its intention to reject any item that requires  
 204 Council review, the Council must designate a representative to meet  
 205 with the parties and present the Council's views in the parties' further  
 206 negotiation on items that the Council has indicated its intention to  
 207 reject. This representative must also participate fully in stating the  
 208 Council's position in any ensuing impasse procedure. The parties  
 209 must meet as promptly as possible and attempt to negotiate an  
 210 agreement acceptable to the Council. Either party may at this time  
 211 initiate impasse procedures under this Section. The parties must

submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days. The Council then must consider the agreement as renegotiated by the parties and indicate by resolution its intention to appropriate funds for or otherwise implement the agreement, or its intention not to do so.

[(k)](l) Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

\* \* \*

[(l)](m) The Council must take any action required by the public interest with respect to any matter still in dispute between the parties. However, any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate it in the agreement.

[(m)](n) *Later years.* The process and timetable in subsections [(i) and] (j) and (k) apply to Council review of wage or benefits adjustments after the first year of any multi-year agreement.

[(n)](o) *Out-of-cycle amendments.* The process in subsections [(i) and] (j) and (k) applies to Council review of any amendment to a collective bargaining agreement that the Council receives after May 15 of any year, but the deadlines in those subsections do not apply. The Council President must set action deadlines which result, to the extent feasible, in a similar timetable relative to the date the Council received the amendment.

## LEGISLATIVE REQUEST REPORT

Bill 2-06, *Collective Bargaining – County Employees - Fact-finding*

**DESCRIPTION:** The requested legislation amends the County Collective Bargaining Law to add a definition of *confidential employee*, exclude confidential employees from the definition of *employee* for the purpose of collective bargaining, and require that the employer and certified representative engage in fact-finding after a bargaining impasse is reached and resume bargaining after receiving the mediator/arbitrator's fact-finding report.

**PROBLEM:** The current collective bargaining law does not exclude from the OPT and SLT bargaining units certain employees who perform confidential duties related to collective bargaining. This creates a conflict of interest for these employees and problems for management. Also, when the employer and certified representative are at impasse, they must submit their dispute to binding arbitration with no information about how the mediator/arbitrator will decide the dispute. If the parties were armed with more information about how the mediator/arbitrator would decide the dispute, they would be more likely to resolve more issues instead of including them in the issues submitted to interest arbitration.

**GOALS AND OBJECTIVES:** To exclude confidential employees from the OPT and SLT bargaining units; and, to add fact-finding to the collective bargaining process as a catalyst to bring about agreement on more issues.

**COORDINATION:** Office of Human Resources

**FISCAL IMPACT:** Office of Management and Budget

**ECONOMIC IMPACT:** n/a

**EVALUATION:** n/a

**EXPERIENCE ELSEWHERE:** n/a

**SOURCE OF INFORMATION:** Joseph Adler (240-777-5050), Director, Office of Human Resources; Carol Rollins, OHR (240-777-5052); Michael Faden, Senior Legislative Attorney (240-777-7905)

**APPLICATION WITHIN MUNICIPALITIES:** n/a

**PENALTIES:** n/a




OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan  
County Executive

MEMORANDUM

July 5, 2005

TO: Thomas E. Perez, President, Montgomery County Council

FROM: Douglas M. Duncan, County Executive 

SUBJECT: Bill to Amend the County Collective Bargaining Law to Exclude Confidential Employees and Include Fact-finding in the Collective Bargaining Process

I am requesting that the Council review and approve the attached bill. The bill addresses two primary issues. The first issue is that certain employees who perform duties related to collective bargaining on behalf of the employer are included in the current Office, Professional and Technical or Service, Labor, and Trades bargaining units. Such employees, who are generally referred to as *confidential employees*, are usually excluded from bargaining units because of the inherent conflict of interest created by their duties and responsibilities. The attached bill addresses this problem by including a definition of *confidential employee* and excluding confidential employees from the definition of *employee* for the purpose of collective bargaining.

The draft bill also enhances the collective bargaining process by including fact-finding as an interim step before the County and the Union take the issues on which they cannot agree to arbitration. Under the current collective bargaining process, when the parties are at impasse, they must submit their final offers on unresolved issues to the mediator/arbitrator who, after attempting to mediate the dispute, must then choose either the County's or the Union's package of final offers. Under the bill, when the parties are at impasse, the mediator/arbitrator would conduct a fact-finding meeting at which each party would briefly state its position on each issue in dispute. Then the mediator/arbitrator would issue a report stating which party's position the mediator/arbitrator favors on each issue. Both the County and the Union believe that the fact-finder's report would act as a catalyst, leading the parties to resolve most, if not all, issues by agreement instead of resorting to arbitration. I do not believe that the amendments in the bill will have any significant fiscal impact. Because fact-finding will take less of the mediator/arbitrator's time than an arbitration hearing, the mediator/arbitrator's fee would be slightly reduced if the parties reach agreement without resorting to arbitration. If the parties still go to arbitration, there would probably be fewer items at impasse, resulting in a shorter arbitration hearing and decision and, presumably, a lower fee.

DMD:cmr

Attachments



**Faden, Michael**

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**From:** Rollins, Carol  
**Sent:** Thursday, October 13, 2005 6:42 PM  
**To:** Faden, Michael  
**Cc:** Adler, Joseph  
**Subject:** Rationale for Requested Amendment to Sec. 33-105

Mike—Joe's off today and asked me to send this to you. This is more detail on the rationale for requesting the amendment to Sec. 33-105 on temporary, seasonal, and substitute employees.

The current wording of Section 33-105 states that a temporary, seasonal, or substitute employee becomes a bargaining unit member after 6 months in a class in which the incumbents are predominantly career merit system employees. We propose to change the wording of Section 33-105 to state that a temporary, seasonal, or substitute employee becomes a member of the bargaining unit when the employee has worked 6 months in a position in an occupational class in which one or more of the incumbents are career merit system employees.

There are two principal reasons for changing the language. The first was to avoid shifts in wages and working conditions for temporary, seasonal, and substitute employees that could result if the number of merit system positions changes from "predominate" to half or less in a given job class. The "predominant" language could result in positions being frequently changed from full scope to limited scope depending upon the makeup of the personnel compliment in any given year. The second reason is that "limited scope" bargaining was really intended to be a distinction in bargaining rights for seasonal employees based on the fact that they typically perform different work than merit system employees. Also, the full scope application to any temporary position for which there is at least one merit system position in the job class addresses the equal pay concern (applied also to working conditions) because it will permit some parity in wages and working conditions for positions that require the same type of work.

Carol M. Rollins, Manager III  
Office of Human Resources  
Montgomery County Government  
carol.rollins@montgomerycountymd.gov  
240-777-5052

10/19/2005

13

**Faden, Michael**

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**From:** Rollins, Carol  
**Sent:** Tuesday, October 25, 2005 3:19 PM  
**To:** Faden, Michael  
**Cc:** Vargas, Carlos; Adler, Joseph  
**Subject:** RE: Rationale for Amendment to Section 33-105

Mike—After a temporary employee has worked for 6 mos, the employee pays \$18.50 in dues as a full-scope unit member, while a temporary employee who's a limited-scope unit member pays \$8.86 in a pay period in which he or she worked at least 25 hours, so an employee who goes from a limited-scope to a full-scope bargaining unit status will pay \$9.64 more in a pay period in which the employee works 25 or more hours and \$18.50 more in a pay period in which the employee works 24 hours or less.

Carol M. Rollins, Manager III  
Office of Human Resources  
Montgomery County Government  
carol.rollins@montgomerycountymd.gov  
240-777-5052

-----Original Message-----

**From:** Faden, Michael  
**Sent:** Tuesday, October 25, 2005 12:50 PM  
**To:** Rollins, Carol  
**Subject:** RE: Rationale for Amendment to Section 33-105

Carol-

Thanks. This is what I needed. One follow-up question: how much would each employee's dues increase because of this move into the bargaining unit?

-----Original Message-----

**From:** Rollins, Carol  
**Sent:** Tuesday, October 25, 2005 11:36 AM  
**To:** Faden, Michael  
**Cc:** Adler, Joseph; Vargas, Carlos  
**Subject:** Rationale for Amendment to Section 33-105

Mike—You had asked how many current employees would be automatically moved into the bargaining unit if this would pass as proposed. Here's the answer. Based on 8/05 stats, a total of 163 temporary employees would become full scope bargaining unit members in the following classes:

Library Desk Assistant: 33 permanent/48 temps  
Public Service Worker II: 19 permanent/18 temps  
Liquor Store Clerk: 24 permanent/77 temps  
Warehouse Worker: 10 permanent/19 temps  
Emergency Services Instructor: 1 permanent/1 temp.

Carol M. Rollins, Manager III  
Office of Human Resources  
Montgomery County Government

14

February 7, 2006



**TRANSCRIPT**  
**February 7, 2006**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
Michael Subin	

February 7, 2006



1 Council President Leventhal,  
2 The motion is made by Ms. Praisner and seconded by Ms. Floreen. A single vote to  
3 establish public hearings on Zoning Text Amendment 06-01: Rural Village Center  
4 Overlay Zone, Zoning Text Amendment 06-02: Mixed Use Town Center Zone, Zoning  
5 Text Amendment 06-03: Rural Neighborhood Cluster Zone TDR option, Zoning Text  
6 Amendment 06-04: Rural Neighborhood Cluster Zone, Rural Open Space. All four  
7 ZTA's will be heard if this resolution passes on March 7th at 1:30 p.m. Those in favor of  
8 the resolution will signify by raising their hands. It is unanimous among those present.  
9 The Council moves into Legislative Session. Do we have Legislative Journal for  
10 approval?  
11

12  
13 Mary Ann Paradise - Deputy Council Clerk,  
14 Yes, you have the journal of January 24th.

15  
16 Councilmember Praisner,  
17 Move approval.  
18

19 Council President Leventhal,  
20 Vice President Praisner has moved approval and Mr. Perez has seconded approval of  
21 the Legislative Journal of January 24th. Those in favor will signify by raising their hands.  
22 It is unanimous among those present. We have introduction of Bill 2-06: Collective  
23 Bargaining, County Employees, fact-finding sponsored by the President at the request  
24 of the County Executive. A public hearing. Do we need a motion? We've got it. A public  
25 hearing is scheduled for March 7th, at 1:30 p.m. We have call of bills for final reading.  
26 Bill 44-05: Motor Vehicles, Parking Violations. Chairwoman Floreen.  
27

28 Councilmember Floreen,  
29 Thank you, Mr. President. The T&E Committee recommends approval of this legislation.  
30 It was introduced apparently because of the concern that maximum -- the current  
31 requirement that a maximum parking fines be assessed against people who park in  
32 handicapped and fire lanes are routinely not imposed by the District Court because of  
33 the District Court's discomfort with that high number. I'm not sure that this will really fix  
34 the problem but we say maybe it will. Basically the Committee recommends approval  
35 with some minor adjustments to repeal the District Court review requirement. We're told  
36 by the District Court they don't review these things. Rearrange the reference to DPWT  
37 instead of the Department of Finance, and require quarterly report on waivers and  
38 refunds rather than the monthly report as well. There needs to be a [concord]  
39 adjustment that we anticipate. And with that, we will recommend approval.  
40

41 Council President Leventhal,  
42 Okay. The T&E Committee's recommendations is before the Council. The clerk will call  
43 the roll.  
44

45 Mary Ann Paradise - Deputy Council Clerk,  
46 Mr. Denis?